

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

8 * * *

9 GEORGE LUSTER,

10 Plaintiff,

11 v.

12 WARDEN JAMES SCHOMIG, et al.,

13 Defendants.
14 _____)

2:04-cv-00281-LRH-LRL

ORDER

15 Before the court is Defendant Martha Sims' Motion for Leave to File Successive Summary
16 Judgment Motion (#159¹).

17 This is a civil rights dispute arising out of Plaintiff George Luster's incarceration at High
18 Desert State Prison in Indian Springs, Nevada. On March 12, 2009, this court issued an order
19 (#109) granting in part and denying in part Defendants' Motion for Summary Judgment (#84). In
20 the order, the court granted summary judgment as to Luster's claims against all of the defendants in
21 their official capacities and Luster's claims against Defendant Schomig. However, the court
22 denied summary judgment as to Luster's First, Eighth, and Fourteenth Amendment claims against
23 Defendant Sims. In particular, the court found that genuine issues of material fact remained
24 concerning (1) Sims' personal participation in the alleged constitutional deprivations, (2) the
25 _____
26

¹Refers to the court's docket entry number.

1 adequacy of the lighting in Luster's cell, and (3) Sims' culpability in denying Luster adequate
2 lighting. Sims now seeks leave to file a successive summary judgment motion to resolve the
3 remaining genuine issues of material fact.

4 "[D]istrict courts have discretion to entertain successive motions for summary judgment,
5 independent of whether the motions involve qualified immunity." *Hoffman v. Tonnemacher*, 593
6 F.3d 908, 911 (9th Cir. 2010). Rule 56 does not limit the number of summary judgment motions
7 that may be filed and allows for exceptions to the default time limits to be made by local rule or
8 court order. Fed. R. Civ. P. 56(c)(1). Also, an order denying summary judgment is subject to
9 reconsideration by the court at any time. *Hoffman*, 593 F.3d at 911. A successive motion for
10 summary judgment may accordingly foster the "'just, speedy, and inexpensive' resolution of suits,"
11 and "is particularly appropriate on an expanded factual record." *Id.* (quoting Fed. R. Civ. P. 1). To
12 avoid abuse of the procedure, however, the court retains discretion to weed out frivolous or simply
13 repetitive motions. *Id.*

14 Having reviewed Defendant Sims' proposed successive motion for summary judgment,
15 submitted as an exhibit to the motion for leave, the court finds that the successive motion is neither
16 frivolous nor simply repetitive. The motion would expand the factual record to address the
17 deficiencies at the time of the prior motion and accordingly seeks to resolve the remaining genuine
18 issues of material fact. The court will therefore grant the request for leave to file a successive
19 motion for summary judgment in the interest of fostering the just, speedy and efficient resolution
20 of this action.

21 IT IS THEREFORE ORDERED that Defendant's Motion for Leave to File Successive
22 Summary Judgment Motion (#159) is GRANTED.

23 IT IS FURTHER ORDERED that the Clerk shall detach and file Defendant's Motion for
24 Summary Judgment, attached as Exhibit 1 to Defendant's Motion for Leave to File Successive
25 Summary Judgment Motion (#159). The Appendix of Exhibits to Defendant's Motion for
26

1 Summary Judgment (#160) are deemed filed.

2 IT IS FURTHER ORDERED that Plaintiff's response must be filed within 30 days after
3 this order is served, and Defendant may file a reply within 14 days after the response is served.

4 IT IS FURTHER ORDERED that the Calendar Call and Jury Trial dates, currently
5 scheduled for November 22, 2010 and December 8, 2010, respectively, are VACATED.

6 IT IS SO ORDERED.

7 DATED this 2nd day of November, 2010.



8
9 LARRY R. HICKS
10 UNITED STATES DISTRICT JUDGE
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26